

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

J.H., BY AND THROUGH HIS NEXT  
FRIEND TERINA GRAY, ON BEHALF OF HIMSELF

AND ALL PERSONS SIMILARLY SITUATED

PLAINTIFF

VS.

CIVIL NO. 3:11cv327DPJ-FKB

HINDS COUNTY, MISSISSIPPI

DEFENDANT

MOTION FOR PRELIMINARY INJUNCTION

BEFORE THE HONORABLE DANIEL P. JORDAN III,  
UNITED STATES DISTRICT JUDGE  
JUNE 17, 2011  
JACKSON, MISSISSIPPI

APPEARANCES:

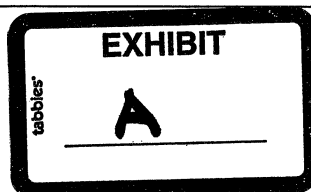
FOR THE PLAINTIFF: MR. JODY OWENS  
MS. Corrie Cockrell

FOR THE DEFENDANT: MS. LISA ROSS

REPORTED BY: CHERIE GALLASPY BOND  
Registered Merit Reporter  
Mississippi CSR #1012

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Jackson, Mississippi 39201  
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1 THE COURT: Good afternoon. We are here, of course,  
2 on the plaintiff's, Disability Rights of Mississippi, motion  
3 for preliminary injunction. Before we dive in, let me ask  
4 counsel, I've read the plaintiff's motion. There was no  
5 response from the defendant, and I'm unclear as to what the  
6 issues are for this hearing. The motion sought the right to  
7 inspect Henley-Young Detention Center. I don't know what  
8 aspect of the motion is disputed.

9 I received a list of witnesses for this hearing.  
10 There are 21 witnesses listed. The reality is that while we  
11 are in two courthouses, all of you have to be out at 5:30 or  
12 you will spend the weekend here. I don't know how we're going  
13 to take 21 witnesses in the next hour and a half. But I'm  
14 wondering whether -- based on the motion that was filed, I'm  
15 wondering whether any of those witnesses are necessary.

16 MR. OWENS: May it please the court. Your Honor, the  
17 county and plaintiffs have been working to compromise. We have  
18 really finalized --

19 THE COURT: Hold on a second.

20 (Short Pause)

21 THE COURT: Go ahead.

22 MR. OWENS: Your Honor, we have agreed to most of the  
23 motion. The county has three portions of the motion that are  
24 still in dispute. We would like the court's interpretation.  
25 Is that correct, Ms. Ross?

1 MS. ROSS: Yes, Your Honor. In this particular case,  
2 the plaintiffs have sought access to all residents in the  
3 juvenile detention center, and we have some orders that they  
4 have submitted in other cases. It's our position that these  
5 three acts that are in question, these three federal acts, are  
6 really guided to protect people either with known disorders or  
7 diseases, people with developmental disabilities, and residents  
8 who have other disabilities. And as a result of that, the  
9 county has a right to come into our facility. We agree with  
10 that, that they have access to the facility.

11 It gets sticky after that when the DRMS wants to come  
12 in and have access to every resident, and we're saying there  
13 are situations where DRMS would have a right to have access to  
14 every resident. One, we say when DRS is conducting --

15 THE COURT: Excuse for more interrupting. Let me get  
16 a list of what the issues are, and then we'll go back. And I  
17 think probably the appropriate way to proceed is to let the  
18 plaintiff to make its motion and you can respond to it. I kind  
19 of want to start with a list of where the disagreement is.

20 MS. ROSS: We agree what is covered by the act.

21 MR. OWENS: Correct, Your Honor.

22 THE COURT: The first dispute is whether or not there  
23 can be access to all residents.

24 MR. OWENS: We agree, Your Honor, and I think counsel  
25 agrees that DRMS is the P&A authority, federal funded, and has

1 access to monitor per the federal mandate.

2 MS. ROSS: The first issue, Your Honor, is all  
3 residents. Can they access -- under what circumstances can  
4 they access all residents?

5 MR. OWENS: Your Honor, I also think we agree that  
6 DRMS has two particular purposes for which they can monitor,  
7 one for investigation purposes --

8 THE COURT: I've got that. Your brief was well done.  
9 I understand. My question to you is: Where is the  
10 disagreement?

11 MR. OWENS: The disagreement on the first issue, Your  
12 Honor, is DRMS's position is that obviously we have the  
13 authority to access the facility to interview individuals  
14 suffering from disabilities. We also have the authority to  
15 talk to individuals who are -- all residents of the facility  
16 pursuant, Your Honor, to 45 CFR 1386.22 and also cited, Your  
17 Honor, in the *Michigan Protection and Advocacy* case --

18 THE COURT: I'm sorry. Give me that code section  
19 again.

20 MR. OWENS: 45 CFR 1386.22.

21 THE COURT: All right. So that -- so the first  
22 disagreement is whether or not you have access to all. So  
23 what's the next disagreement?

24 MS. ROSS: Your Honor, we've asked them to -- there is  
25 also a question of who's an eligible resident, and we said the

1 eligible residents are those individuals who are protected by  
2 the act. And so that we don't have to keep coming before this  
3 court because they will be down there carrying out their duties  
4 and responsibility that we need to define who the eligible  
5 residents are.

6 MR. OWENS: Your Honor, I feel that that's kind of a  
7 spinoff from the first issue, obviously, because it depends on  
8 whether we are investigating or are we monitoring at that point  
9 because we think our investigation authority allows us to talk  
10 to residents who may not --

11 THE COURT: I'm sorry. Let me stop you. I don't want  
12 any argument right now. I've read what you've presented. I  
13 want to know where the disagreements are. That's all I want.  
14 And then we're going to take them up one at a time.

15 MR. OWENS: I think the county disagrees about who is  
16 an eligible resident.

17 THE COURT: That does sound like to me it's sort of  
18 the same issue.

19 MS. ROSS: Who is the eligible resident.

20 THE COURT: All right. What's the next area of  
21 disagreement?

22 MS. ROSS: Beg the court's indulgence one moment.

23 (Short Pause)

24 MS. ROSS: Your Honor, also there's an issue as to  
25 who's the final arbiter. We say that they are the final

1     arbiter of probable cause as to whether one of these people who  
2     fall under -- one of the individuals protected by the act, if  
3     they have reason to believe that person is abused or neglected,  
4     then they have probable cause to come in. And they have used  
5     this word "probable cause" without connecting it to anything.  
6     So we disagree that they have the right to establish probable  
7     cause on that.

8             MR. OWENS: Is it a distinction that we have probable  
9     cause to determine who is covered under the act or who has  
10    disabilities? Because our position is we do have probable  
11    cause both to determine that an abuse has occurred and also who  
12    is covered under the act.

13            MS. ROSS: Your Honor, we don't disagree that they can  
14    decide who is covered under the act, but they say under this  
15    first order -- well, this most recent order that they presented  
16    that they can come in and interview any resident to determine  
17    if the resident has a disability. And, you know, we have --  
18    I've asked them to provide authority for that, and they have  
19    pointed me to 42 USC -- I think they pointed me actually to  
20    42 -- Section 51.42. And we read that as saying one thing as  
21    being guided by the people with mental disabilities or  
22    developmental disabilities or other disabilities, and they read  
23    it as "all residents."

24            So we are back down to who's covered, and I think that  
25    is the driving issue, Your Honor. Once we can determine whose

1 covered, whose protected by these acts and that will certainly  
2 decide what kind of access they can have.

3 Your Honor, the county has provided --

4 THE COURT: When you say "final arbiter" -- there's no  
5 dispute that -- this is our first hearing in this courtroom.  
6 It obviously has some kinks as y'all endured earlier. But what  
7 I -- what I think I hear you saying is there's no dispute under  
8 the codes and under the CFRs that they are the final arbiter  
9 with respect to probable cause. But you're saying that they  
10 should not be the final arbiter as to whether or not somebody  
11 is actually covered by the act, whether they have a disability.

12 MS. ROSS: When I've read the cases, Your Honor, I  
13 have not seen one that said they are the final arbiter on that  
14 determination.

15 THE COURT: That's the issue you have.

16 MS. ROSS: That's one issue that we have. Because we  
17 have minors there, Your Honor, that we say -- not everybody has  
18 a disability.

19 THE COURT: So that's two issues. I think, Mr. Owens,  
20 you said there were three?

21 MR. OWENS: Yes, Your Honor. I think the spinoff is I  
22 think the county is agreeing that we have access to individuals  
23 with disabilities, by where it stands past that. I think  
24 that's all the issue.

25 MS. ROSS: Your Honor, to narrow it down even further,

1 we have told them that we believe that they have access to  
2 individuals who don't have disabilities when they are there to  
3 conduct an investigation involving a person who has a  
4 disability or who is mentally ill or who is developmentally  
5 disabled.

6 If they are conducting an investigation because they  
7 received a report that one of those people have been injured --  
8 abused or neglected, then to the extent that a nondisabled  
9 resident has information, then they will be permitted access.  
10 And if they want to interview a nonresident -- a nondisabled  
11 resident as a part of their probable cause, then they can have  
12 access. But this carte blanche access to come in whenever you  
13 want to talk to them about whatever, we are saying the statute  
14 is not that broad.

15 THE COURT: All right. Mr. Owens, why don't you go  
16 ahead and argue your motion. I guess start by telling me how  
17 your position differs from the defendants. In other words,  
18 Ms. Ross has just told me that she agrees that your client  
19 should have access essentially to anybody at the facility as  
20 long as it's in conjunction with investigation or monitoring of  
21 somebody who has a disability.

22 MR. OWENS: I think the distinction is Ms. Ross --  
23 Ms. Cockrell is going to make the argument, Your Honor. But I  
24 think the distinction is monitoring the investigation.  
25 Ms. Ross is making a distinction of what gives us what access.



1 We can determine the investigating through the monitoring.

2 That's the distinction. Your Honor, Ms. Cockrell is going to  
3 give you some background information on that.

4 MS. COCKRELL: You want me to give you the background  
5 on how we got to this point or go straight to that?

6 THE COURT: If it's something that's in your brief,  
7 I've read it.

8 MS. COCKRELL: Okay. May it please the court, we have  
9 access to juvenile detention centers around this state, and the  
10 P&A, protection and advocacy system, has access to similar  
11 detention center, training schools around country based on the  
12 protection and advocacy rights -- laws that are in set up by  
13 Congress. Congress designated two distinct bases for access to  
14 the facilities and residents within those facilities, and one  
15 is to investigate allegations of abuse or neglect, and the  
16 second one is to monitor the facility and the treatment of the  
17 residents in that facility.

18 DRNS's rights are codified in three separate but  
19 related statutes, and they are the Protection and Advocacy for  
20 Individuals with Mental Illness Act of 1986 and is often  
21 referred to as the PAIMI Act. That's P-A-I-M-I. And if Your  
22 Honor is okay with that, I'll refer to it as PAIMI.

23 The second one is the Developmental Disabilities  
24 Assistance -- Developmental Disability Assistance and Bill of  
25 Rights Act of 2000. And that is often referred to as the PADD

1 ACT. That is P-A-D-D.

2 And the third statute is the Protection and Advocacy  
3 of Individual Rights Program, and that is often referred to as  
4 PAIR P-A-I-R.

5 Each of these acts cover individuals who live with  
6 developmental mental illnesses or they fall into a catch-all  
7 category which would be the PAIR statute. And so I'm going  
8 discuss each one of them separately.

9 The first one, PAIMI, covers individuals who live with  
10 mental illnesses such as bipolar, substance abuse, depression,  
11 not limited to those things, but those are just examples.  
12 PAIMI requires the P&A's to have authority to access facilities  
13 in the state which provide care and treatment to mentally ill  
14 individuals, and that is per 42 USC Section 1085 -- I'm sorry,  
15 10805, subsection 3.

16 And also PADD is related to individuals who have  
17 developmental disabilities. It specifically refers to  
18 individuals with developmental disabilities, and it  
19 specifically provides that people with disabilities that occur  
20 before the age of 22 and includes mental and physical  
21 impairments or a combination of both. And also if there is a  
22 substantial limitation in three or more of the major life  
23 activities such as self-care, expressive or receptive language.  
24 Learning disabilities fall within that category as well.  
25 Subdirection capacity for individual independent living. So

1 children that will fall -- people that will fall into that  
2 category will be children who are born with fetal alcohol  
3 syndrome or behavior -- who have developed any type  
4 behavior issues.

5 THE COURT: I'm going stop you. What you're telling  
6 me is in the brief, which I've read. I understand it. I  
7 understand the setup. I think what I've heard is that there's  
8 a very narrow issue that I'm being asked to consider. That  
9 narrow issue, as I understand it, is the extent to which your  
10 client can have access to individuals who are not themselves  
11 covered by the acts.

12 MS. COCKRELL: Right.

13 THE COURT: Somebody who's not disabled.

14 MS. COCKRELL: Yes, sir.

15 THE COURT: So that's what I need for you to address.

16 MR. OWENS: Your Honor, with respect to access, there  
17 are two -- each provision deals with access, as Ms. Cockrell  
18 cited. Each provision has an access component. Particularly I  
19 want to point the court's attention, as I stated earlier, to 45  
20 CFR 1386.22 that states, "After Section F where it speaks to  
21 the access to individual disabilities, Section G, the system  
22 and all of its authorized agents shall unaccompanied access to  
23 all residents of a facility at reasonable times, which at a  
24 minimum shall include normal working hours, visiting hours --  
25 and visiting hours."

1           Also in addition, Your Honor, 42 CFR 5142 also  
2 addresses another one of the PADD acts, access to facilities.

3           THE COURT: B. You're going to B.

4           MR. OWENS: "The P&A system shall have reasonable  
5 unaccompanied access to public and private facilities and  
6 program in the state which render the care and treatment for  
7 individual's mental illness and to all areas in the facilities  
8 which are used by the residents or are accessible to the  
9 residents."

10           Your Honor, finally in our brief we cite the *Cotton*  
11 case, a Fifth Circuit case that's the authority -- I think  
12 counsel opposite points that the *Cotton* case deals where we  
13 only have a mental health facility. But the *Miller* case that's  
14 also in our brief, which is 849 F. Supp. 1202, a 1994 decision,  
15 deals with a mental health care facility in which access was  
16 attempted to be limited to a detention center. And  
17 particularly the court found that denying full access prevents  
18 the advocacy organization for bringing in their own mental  
19 health professionals to ascertain whether any residents do, in  
20 facts, suffer from mental the illnesses.

21           Your Honor, our positions is pretty simple. We feel  
22 that the facility determines who has mental illnesses or fall  
23 into this umbrella that there is an inherent conflict of  
24 interest. We think federal act intended for the DRMS and the  
25 P&A authorities throughout the country to have that assess to

1 make a determination. If the center themselves has the  
2 authority to determine who can be interviewed or who suffers  
3 from a disability, they would limit the federal authority.  
4 It's our belief, Your Honor, that Congress did not intend and  
5 case law to support the same.

6 THE COURT: Do you have any authority that addresses  
7 that issue? The cases that you cited are talking about  
8 different issues. I understand you're saying that they are  
9 analogous. Do you have a case that's on point?

10 MR. OWENS: There is no case directly on point. We  
11 think the *Cotton* case is only Fifth Circuit authority that we  
12 have been able to find that talks about the facility's attempt  
13 to limit the access and how it's a violation of the law.

14 THE COURT: All right. Thank you.

15 MR. OWENS: At this time, Your Honor, if you'd like to  
16 hear any witnesses, we can show the disabilities and how we  
17 actually evaluated and determine individuals with disabilities.  
18 Or after Ms. Ross finished her argument, we'd be happy to  
19 provide the court with the same.

20 MS. ROSS: Your Honor, just briefly, I would call the  
21 court's attention to Exhibit B that was -- it's Exhibit B to a  
22 case that Judge Lee had involving the Disability Rights  
23 Mississippi. And some of the things that we simply asked them  
24 to do in the order is to state who is disabled.

25 For example, in the Lauderdale County case that was

1 before Judge Lee, in the agreed order after they saw the  
2 preliminary injunction in that case, what they asked them to do  
3 was to -- the facility to do was to come up with a list of  
4 children who had -- or people in the facility who were  
5 developmentally disabled or had a mental illness, and they said  
6 that they would be able to go in and interview those children.

7 I think that's a concession that you don't get a right  
8 to go in and interview everybody unless they fall into -- as we  
9 said earlier, Your Honor, if they are there for an  
10 investigation of an individual who is covered by these acts,  
11 then to the extent they are investigating abuse and neglect,  
12 then they have a right to come in.

13 But imagine, Your Honor, Parchman has people who are  
14 mentally disabled. The Yazoo County FCI has people who are  
15 mentally disabled. That gives them the right to have access to  
16 those individuals up there who are mentally disabled. But can  
17 they just go to FCI tomorrow and say, "Because you have  
18 residents who are disabled, we can interview every inmate in  
19 this facility"?

20 We're saying Congress did not intend that. Congress  
21 wanted to protect a certain class of individuals, and that's  
22 why they have given them access, and we don't -- we don't even  
23 argue with that, Your Honor. We have allowed them to come into  
24 the facility for the last two years, almost unfettered access.  
25 And they then have access maybe to residents who they were

1 not -- who we contend now they were not supposed to have access  
2 to.

3 Looking at this act, these acts that they cited, they  
4 are geared to three protected classes, people with other  
5 disabilities that don't fall into the categories of  
6 developmentally disabled or mentally disabled. And we're  
7 asking the court just to confine the perimeters under which  
8 they can go in.

9 Yes, they, can go in and monitor, Your Honor. We have  
10 told them they can go in and monitor. They can pass out  
11 pamphlets. They want to make announcements. I don't know.  
12 Once you pass out pamphlets and let everybody know what their  
13 rights are, then anybody who comes to the lobby or is in a  
14 living quarters will see what their rights are. They are free  
15 to call them.

16 They have said we should provide private confidential  
17 phone calls. I don't know how the county -- are we to build a  
18 new room to provide confidential phone calls? We can't stop a  
19 child now if they are entitled to a phone call from calling  
20 DRMS or Southern Poverty Law Center.

21 The problem we have encountered, Your Honor, and the  
22 reason we are here today is because this is disruptive. The  
23 facility has been disrupted by their presence. We want to  
24 accommodate them; but if they are able to go in and talk to any  
25 resident about any thing, then, you know, we're saying that's

1 too far outside of what Congress intended to do.

2 THE COURT: Let me make sure now that I've -- I think  
3 I've got it framed in my mind. Under 42 CFR 51.42, the P&A  
4 system has the right to have reasonable unaccompanied access to  
5 residents at all times necessary to conduct a full  
6 investigation of an incident of abuse and neglect. They also  
7 have monitoring rights. It says, "This authority shall include  
8 the opportunity to interview any facility, service recipient,  
9 employee, or other persons, including the person thought to be  
10 the victim of the abuse." So on the one hand, you're not --

11 MS. ROSS: We don't bicker with that at all.

12 THE COURT: You're not disputing that. If they are  
13 there to monitor, if they are there to investigate, then they  
14 essentially have unfettered access to anybody there.

15 MS. ROSS: Who have information related to their  
16 investigation. Yes, Your Honor.

17 THE COURT: Or their monitoring.

18 MS. ROSS: Or their monitoring.

19 THE COURT: The issue, if I understand you correctly,  
20 is that they shouldn't be permitted to come in for the purpose  
21 of interviewing all the residents to determine who has a  
22 disability. Am I hearing you correctly?

23 MS. ROSS: That's right. If they have reason to  
24 believe that somebody has a disability, Your Honor, there are  
25 steps that they can take. But to say that we have to open the



1 doors up and say, "Come interview all of these children and  
2 I'll determine which one of them has disabilities," I don't  
3 think they have that authority. And there certainly isn't any  
4 Fifth Circuit authority.

5 Your Honor, when you're framing your order in this  
6 case, think about the floodgates that this will open, that  
7 jails throughout -- and detention centers throughout this state  
8 because it becomes who's running the jails. And we want to  
9 protect and see that these people are protected too, Your  
10 Honor. That's why we have given them the access that they have  
11 had, and we're not even arguing about that. But it has to be  
12 some limit.

13 THE COURT: Do I have the issue framed correctly?  
14 Your concern is they shouldn't be able to come in for the sole  
15 purpose to conducting interviews designed to determine who has  
16 a disability.

17 MS. ROSS: Yes.

18 THE COURT: Otherwise, if they are coming in to  
19 investigate, they are coming in to monitor, they have  
20 unfettered access to anybody.

21 MS. ROSS: Well, in monitoring -- what is monitoring?  
22 If they are coming in -- for example, Your Honor, they said  
23 that they want to take pictures, you know, inside the facility,  
24 which they have a right to photograph the facility, but we  
25 don't think they have a right to take a picture of any resident

1 because you get into other privacy issues.

2 MR. OWENS: That point is agreed and we concede, Your  
3 Honor. We have never taken pictures of the residents.

4 THE COURT: Let me ask you the same question that I  
5 asked Mr. Owens. Do you have any authority supporting your  
6 position?

7 MS. ROSS: The position that --

8 THE COURT: They should not be allowed to come in the  
9 facility to conduct interviews to determine whether or not  
10 somebody is disabled.

11 MS. ROSS: Your Honor, I have found no case law that  
12 gives them that right, and the statute doesn't say that. I've  
13 not read the statute as saying that. So in the absence of  
14 that, I say there is no authority for them to do what they are  
15 requesting to do.

16 THE COURT: But on the flip side, you didn't find any  
17 supporting your position either.

18 MS. ROSS: No. I would say that the courts have --  
19 usually these cases have mostly come up, Your Honor, when they  
20 have just been denied records related to a person who was  
21 disabled. You know, that's not the case here. So this issue  
22 has never really been before a court or answered in the Fifth  
23 Circuit.

24 THE COURT: All right. Anything else, Ms. Ross?

25 MS. ROSS: No.

1 MR. OWENS: For proper context purposes, I feel it is  
2 necessary to clarify some things that Ms. Ross indicated to the  
3 court. In particular, Ms. Ross cites the Lauderdale County  
4 order that was entered on this same issue that allowed DRMS to  
5 have access.

6 Your Honor, their order did not limit DRMS's access.  
7 It dealt specifically with individuals with disabilities, but  
8 the DRMS and their agents were still allowed to interview  
9 residents to determine if they were suffering from  
10 disabilities.

11 In addition, when Ms. Ross speaks about disrupting the  
12 facility, we think it's telling, Your Honor, that not only are  
13 we currently occupying seven facilities in the state, but we  
14 also on our witness list have brought with us director Tony  
15 Best of the Harrison County facility who can testify to our  
16 measures that we -- and the extent that we go to avoid any  
17 interference with the facility. In particular, Henley-Young --  
18 most of these facilities have schools for kids during the  
19 school year. So we don't even go to Henley-Young until after  
20 school hours.

21 I think it's also telling that we did have, as  
22 Ms. Ross said, carte blanche access to the facility until we  
23 filed the conditions lawsuit. At that point, as the record  
24 indicates, we were told we can no longer access the facility.

25 Lastly, Your Honor, with respect to individuals with

1 disabilities, we interrupt this order, this act, to allow us to  
2 interview individuals to determine if they have a disability.  
3 Our practice is that if they do not have a disability, we no  
4 longer talk to them. But if we witness an abuse of the  
5 individual with a disability, then we speak to them. There is  
6 systemic abuse in the Henley-Young facility in which we have  
7 documented and which we've also provided Ms. Ross and her  
8 clients over the last six months. An example for the court  
9 would be 23 hour cell lockdown. We are not arguing the merits  
10 of the lockdown here, Your Honor, but I am just giving the  
11 example that the other residents, of course, know that no one  
12 is leaving their cell. So as part of our investigation, we  
13 determine if everyone is saying this. That's why some of the  
14 provisions of the act allow us to see what other residents have  
15 seen. Thank you, Your Honor.

16 THE COURT: All right.

17 MS. ROSS: Your Honor, I would like to present the  
18 court with the Lauderdale County order.

19 MR. OWENS: It is part of the record, Your Honor. All  
20 of the orders in the state that we have --

21 MS. ROSS: And also if they had access to all  
22 residents, I don't see it in this order from Judge Lee.

23 THE COURT: I think Mr. Owens attached it to his  
24 memoranda. In other words, I think it is already docketed in  
25 the record.

1 MS. ROSS: I ask that you look at that, Your Honor.

2 THE COURT: I will. I'm not going tell anybody that  
3 they can't put on evidence that they want to put on. I will  
4 tell you that there's going to be -- if we run over, we're  
5 going to have to come back Monday because there is -- again  
6 there's a time limit on when the court is open. So, Mr. Owens,  
7 if you want to put on evidence, this is your hearing. You can  
8 proceed as you like.

9 I tell you what I don't need though. I don't need  
10 testimony that goes to the merits of your lawsuit, whether  
11 there's abuse at the facility, because that is not a part of  
12 your motion today. Your motion today deals strictly with  
13 access, as I understand it. So if you have witnesses that you  
14 want to call with respect to the access issue, then this is  
15 your opportunity to do that.

16 MR. OWENS: Court's indulgence, please.

17 THE COURT: Yes, sir.

18 (Short Pause)

19 MR. OWENS: Your Honor, we have no witnesses.

20 THE COURT: Ms. Ross?

21 MS. ROSS: No witnesses, Your Honor.

22 THE COURT: Let me ask both sides, obviously there's a  
23 specific standard that applies to preliminary injunctions. Is  
24 there any other aspect of the motion that either side wants to  
25 address? I understand the substantive legal issue now. Is

1 there anything else that needs to be addressed?

2 MS. ROSS: Not from -- beg the court's indulgence.

3 (Short Pause)

4 MS. ROSS: Nothing from the county, Your Honor.

5 MR. OWENS: Nothing from the plaintiff, Your Honor.

6 THE COURT: All right. The plaintiff's memoranda does  
7 a nice job of laying out sort of the framework of the statutes.  
8 I don't think that there's anything in the memoranda that's  
9 necessarily in dispute, and the issue that we talked about  
10 today is not addressed in that document. That's not an issue  
11 that I thought about before I came up here because it wasn't  
12 presented to me. I'm not in a position to rule on an issue  
13 without looking at it. So I will -- I'm going to take it under  
14 advisement. I'll look at it first of next week, and then I'll  
15 issue my ruling on it.

16 MS. ROSS: And, Your Honor, will we have an  
17 opportunity to provide the court with any case law?

18 THE COURT: I'm happy to give you an opportunity to  
19 brief the issues, if you'd like. I've kind of got a sense from  
20 both of you that you had already looked, and there's no  
21 authority. But --

22 MS. ROSS: I want to really try to find -- and we have  
23 talked a whole lot about who resident is and to see if Congress  
24 or somebody somewhere defined resident. That may clear the  
25 whole issue up.

1 THE COURT: I'm more than happy to let you do the  
2 research instead of me. How much time would you like to submit  
3 briefs?

4 MR. OWENS: Your Honor, we have briefed it fully. How  
5 much time do you need?

6 MS. ROSS: Five days.

7 MR. OWENS: Five days is fine.

8 THE COURT: Why don't I ask both parties to submit  
9 briefs by 5:00 next Friday.

10 MR. OWENS: Your Honor, as I understand it, I think it  
11 is only on the point of access to residents. Individuals  
12 without disabilities --

13 THE COURT: Well, tell me if I'm wrong. I thought the  
14 issue was whether or not -- whether or not the plaintiffs were  
15 allowed access for the purpose of determining whether somebody  
16 has a disability. Ms. Ross has already agreed with you that  
17 you have access to anybody that relates to investigation, and  
18 that's clearly the case under everything I've read.

19 So the more refined question is: Can you go in for  
20 the sole purpose of determining -- I'm sorry. Can you go in  
21 and meet with individuals that you don't know to have a  
22 disability for the sole purpose of determining whether or not  
23 they have a disability. I think that's the argument I was  
24 hearing.

25 MS. ROSS: Also, Your Honor, on monitoring, just

1 monitoring the facility, do they have access to all  
2 individuals. You know, I know they are going pass by them, see  
3 them. But access where they can come in and conduct  
4 confidential interviews for the purpose of monitoring. So  
5 we'll address that.

6 THE COURT: That will be a second issue. Those are  
7 the two issues. So 5:00 Friday. I won't ask for rebuttal. I  
8 can research myself.

9 MR. OWENS: To make sure I have the second issue, how  
10 are you wording that?

11 THE COURT: Let me make sure I understand. I think  
12 what I hear her saying is whether or not your client can have  
13 access to individuals who do not -- who are not known to have  
14 disabilities for the purpose of monitoring.

15 MR. OWENS: To determine that they have disability?

16 THE COURT: That's the first question.

17 MS. ROSS: That's the first one.

18 MR. OWENS: The purpose of monitoring.

19 THE COURT: That's the second one. The first one is  
20 whether or not you can interview them to determine whether or  
21 not they have a disability. That's the issue number one.  
22 Issue number two is whether or not you can interview these  
23 individuals as part of your role in monitoring the facility.

24 MS. ROSS: In the absence of an investigation and  
25 probable cause, Your Honor.



1 THE COURT: Right.

2 MR. OWENS: I'm a little perplexed about monitoring.  
3 Monitoring I understand we go into the facility and ask them do  
4 they have disability or --

5 THE COURT: I'm not saying she's right. I'm saying  
6 that's what she's arguing.

7 MR. OWENS: Thank you, Your Honor.

8 THE COURT: I'll give you an opportunity to brief it.

9 MR. OWENS: Yes, Your Honor.

10 THE COURT: Anything further?

11 MS. ROSS: That's it, Your Honor.

12 THE COURT: Thank you, we're adjourned.

13 (Recess)

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CERTIFICATE OF REPORTER

I, CHERIE GALLASPY BOND, Official Court Reporter, United States District Court, Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true and correct transcript of the proceedings had in the aforementioned case at the time and place indicated, which proceedings were recorded by me to the best of my skill and ability.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

This the 19th day of June, 2011.

s/ *Cherie G. Bond*  
Cherie G. Bond  
Court Reporter